

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**In re:**

**UP – FIELDGATE US INVESTMENTS – Case No. 6:17-bk-00088-CCJ  
FASHION SQUARE, LLC,**

**Chapter 11**

**Debtor.**

**THE BANCORP BANK’S RESPONSE AND OBJECTION TO APPLICATION OF UP  
FIELDGATE US INVESTMENTS-FASHION SQUARE, LLC TO EMPLOY R. SCOTT  
SHUKER AND THE LAW FIRM OF LATHAM, SHUKER, EDEN & BEAUDINE, LLP,  
AS DEBTOR’S COUNSEL, NUNC PRO TUNC TO JANUARY 6, 2017**

Secured creditor, The Bancorp Bank (“Bancorp” or “Lender”), a Delaware chartered banking corporation, by and through its undersigned counsel, hereby responds and files its objection to Application of UP Fieldgate US Investments-Fashion Square, LLC to Employ R. Scott Shuker and the Law Firm of Latham, Shuker, Eden & Beaudine, LLP, as Debtor’s Counsel, *Nunc Pro Tunc* to January 6, 2017 (“the Application”), filed on January 17, 2017 (DKT #26), as follows:

1. On January 6, 2017, Debtor filed its chapter 11 petition.
2. That same day, Debtor filed a motion for use of cash collateral (“CC Motion”) under a proposed budget (the “Budget”) (DKT #3).
3. On January 10, 2017, Lender filed its objection to the CC Motion (DKT #13).
4. On January 11, 2017, the Court conducted a hearing on the CC Motion and entered an interim order thereon on January 12, 2017 (the “Interim CC Order”) (DKT #20).
5. On January 18, 2017, Lender filed a motion for relief from the automatic stay under Section 363(d)(1) & (d)(2) (the “Stay Motion”), the allegations of which are incorporated herein by reference (DKT #30). Thereafter, on January 23, 2017, Lender filed a motion

pursuant to Section 1112(b) of the Bankruptcy Code, for entry of an order dismissing the instant Chapter 11 case and/or converting the case to a case under Chapter 7 (DKT #38).

6. As detailed in the afore-referenced motions, the Debtor filed this hugely underwater, single asset case in bad faith for the improper purpose of interfering with Lenders legitimate remedies in the foreclosure action pending in Federal District Court, while at the same time continuing to mismanage the Debtor. In any event, Lender objects to the subject engagement (assuming the case is not dismissed or converted) because the Debtor is not entitled to pay its counsel from Lender's "cash collateral" without its consent, which it does not grant for this purpose. *Putnal v. SunTrust Bank*, 489 B.R. 285 (Bankr. M.D. Ga. 2013). Debtor cannot provide Lender adequate protection for the use of the revenues to pay a law firm who is providing his services to assist in trying to maintain this chapter 11 case. If Debtor's principal wishes to be solely responsible and liable for the law firm's fees and expenses, without any right of contribution or other claim against the estate, then the Court can determine whether payment by the insider creates any conflict of interest.
7. The statement of hourly rates in the Application does not bind Lender or this Court as to their appropriateness for this case.

Wherefore, Bancorp responds to the Application of UP Fieldgate US Investments-Fashion Square, LLC to Employ R. Scott Shuker and the Law Firm of Latham, Shuker, Eden & Beaudine, LLP, as Debtor's Counsel, *Nunc Pro Tunc* to January 6, 2017.

Co-counsel:

Respectfully Submitted,

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Attorneys for Bancorp

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been filed with the Court via the ECF system and furnished on this 26th day of January, 2017 via U.S. Mail to the 20 largest unsecured creditors and to:

**UP Fieldgate US Investments-Fashion Square, LLC**  
33201 E. Colonial Drive  
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**R. Scott Shuker**  
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/s/ Kevin A. Reck  
Attorney